Minutes of the 90th meeting of the Board of the EHRC

02 July 2020
Via video conference using WebEx

Attending:

Commissioners
David Isaac, Chair
Pavita Cooper
Alasdair Henderson
Rebecca Hilsenrath, Chief Executive Officer
Susan Johnson
Helen Mahy
Mark McLane
Lesley Sawers
Caroline Waters

Officers
Cath Denholm, Executive Director - England and Corporate Improvement and Impact
Melanie Field, Executive Director - Wales and Strategy and Policy
Jacqueline Killeen, Director – Compliance (item 4 & 10)
Callum MacInnes, Principal – Corporate Governance
Bill Malloy, Director - Finance and Procurement
Libby McVeigh, Director - Strategy and Governance
Alastair Pringle, Executive Director - Scotland and Corporate Delivery
Adam Sowerbutts, Director – Legal (item 4)
Sarah Whelan, Senior Associate – Corporate Governance

Guests
Alison Parken, Interim Chair - EHRC Wales Committee
Charles Ramsden - Government Equalities Office

1. Chair's introduction

1.1 David Isaac welcomed attendees, specifically the new members of the Executive Group: Cath Denholm, Jackie Killeen, Bill Malloy and Adam Sowerbutts.

1.2 Alison Parken continued to attend as Interim Chair of the Commission's Wales Committee, pending the appointment of a Wales Commissioner.

2. Apologies for absence

2.1 Suzanne Baxter sent apologies.

3. Declarations of interest

3.1 The Board were updated on a number of declarations:

3.1.1 Caroline Waters is mentoring the new Auditor General for Audit Scotland;

3.1.2 Mark McLane has been appointed to lead the Financial Services Skills Commission Diversity and Inclusion work stream;

3.1.3 Pavita Cooper had updated her declaration of interests on 25 June 2020. This was with regards to a donation made at a fundraising event on 22 October 2013, which she had hosted in support of a personal friend who was standing to be a Conservative Party MP. This was prior to Pavita Cooper joining the Commission on 27 April 2018. A question was raised about the time that had elapsed between the donation and the declaration being updated and whether this had any impact on decisions taken by the Board about whether or not to commence investigations into the Labour Party and Conservative Party. In order to address any real or perceived conflicts of interest, the Board agreed to review the history of these matters. Board members agreed to meet without Pavita Cooper present to determine whether any decisions would have been made differently had she recused herself.

4. Meet and greet the new Executive Team members

4.1 Short biographies of the new members of the Executive Team had been provided to Board prior to meeting.

4.2 The new Executive Team members, Cath Denholm, Jackie Killeen, Bill Malloy and Adam Sowerbutts introduced themselves to the Board. Commissioner's welcomed them to the Commission and stated that they look forward to working with them.

5. Minutes of the 89th Board meeting and the Investigations Board call.

5.1 Minutes of the 89th Board meeting were agreed as an accurate record.

5.2 Minutes from the Investigations Board call of 21 May 2020 were agreed as an accurate record.

6. Actions arising

6.1 The Board reviewed the log of actions arising from previous Board meetings (EHRC 90.05).

6.2 Action 89/4.5 - Board members had requested the production of a log of Board calls that take place outside formal Board meetings. The Chair advised that he was happy that this had been progressed and that a log that set out Board business and provided a forward look of Board activities had been created.

6.3 The Board queried:

6.3.1 Action 88/7.1 b) III - Leadership and the Commission's improvement journey, regarding Commissioners' involvement in the lessons learnt exercise. Officers advised that input had been received from Commissioners who lead on the investigations.

6.3.2 Action 87/6.2 b) – Future of the Human Rights Act. Given that the policy landscape is moving at pace, the Board requested that this was covered at a future Board meeting to allow for more substantial debate. **Action: Sarah Whelan to schedule this for a Board item at the November meeting.**

6.3.3 Action 86/7.1 g) – Gender pay gap reporting. The Board requested an update on when gender pay gap reporting will recommence and the implications of a gap in data collection. Given the various petitions that have been sent to No. 10 on ethnicity pay gap reporting, Board requested an update on our response. Officers advised that this would be picked up within the new race programme. **Action: Rebecca Hilsenrath to provide an update to Board by correspondence.**

7. Governance and assurance item

7.1 Legal Investigations update.

7.1.1 Alasdair Henderson and officers updated the Board on the BBC and Labour Party investigations. Updates were provided on the progress of the investigations, timelines, communications strategies and next steps.

7.2 Updates by exception from Committee/CWG/Lead Commissioners

7.2.1 The Board were advised that recruitment for four new Scotland Committee members was underway, following a delay due to the coronavirus epidemic.

7.2.2 The Interim Chair of the Commission's Wales Committee advised that she would be stepping down, but would remain a member of the Wales

Committee. A process is underway to identify another member of the Committee to step up as the Interim Chair from 1st August pending the appointment of a permanent Chair.

7.2.3 The lead Commissioner for the Commissioner Working Group on the measurement framework, advised that officers were working on a synthesis report on the impact of the coronavirus on equality and human rights; and considering delaying 'Is Britain Fairer?' until 2022. The Committee will provide the Board with an update in August / September. **Action: Sarah Whelan to co-ordinate with the Commissioner Working Group lead officer.**

8. Executive Updates

8.1 Chief Executive's Report:

8.1.1 Rebecca Hilsenrath presented the CEO's report on strategic issues and performance (EHRC 90.06 and 90.07). The Board had reviewed the CEO's report ahead of the meeting. The following issues were considered further:

a) **Social Care**

i) Discussions on this work had begun, with stakeholder engagement being positive. Caroline Waters was also providing advice. An update will be provided to Board in due course.

b) **New normal programme**

i) The Commission were scoping work to ensure that its strategy, people, estates and ways of working were fit for purpose in the "new normal". A secondee from the Nursing and Midwifery Council had joined the Commission to look at the lessons learned from handling of the pandemic and the management of post-coronavirus adaptations. The Board were pleased with this and requested further details in due course.

ii) The Executive team noted that they were expecting staff to continue to work from home until at least September. Display Screen Assessments for home working and a pulse survey had taken place. The results of the pulse survey were largely positive and would be shared with the Board following the meeting. Staff had been provided with equipment to facilitate home working where applicable. **Action: Sarah Whelan to share results of the pulse survey with the Board w/c 06 July.**

c) **Hostile environment**

i) The proposed terms of reference for the section 31 (PSED) assessment were served and publicly announced on 12 June. The assessment is focused on how the Home Office meaningfully considered the impact of its hostile / compliant environment policies and practices on the Windrush

generation. A very constructive engagement with the Home Office had taken place, including at Permanent Secretary Level.

d) **Chair of Commonwealth Forum of National Human Right Institutions**

i) The Commission were due to hand over Chair of Commonwealth Forum of National Human Right Institutions to Rwanda in June, on the fringe of the Heads of Government meeting, which was postponed due to the pandemic. It was noted that the FCO had now confirmed that they will fund the Commission to continue to Chair the forum, subject to approval from the Treasury.

e) **Success measures and KPIs**

i) Commissioners were given the opportunity to comment on the success measures and corporate KPIs ahead of the meeting. Officers were collating these comments and would feed these into the reports. The Business Plan had been further prioritised, to free up resources for new programmes of work, and it was proposed to continue doing so on a 90-day planning cycle in order to remain responsive in a fast moving environment. This would have an impact on the success measures, which would need to be a 'living document'. The Board advised that clear baselines needed to be in place against each success measure to assist in tracking progress. The Board also suggested that consideration should be given to the inclusion of environmental and sustainability KPIs. **Action: Officers to incorporate success measures and KPIs to reflect Board comments for approval at the September Board meeting.**

f) **Performance report**

i) It was noted that the new format Board Performance report would draw from the electronic project management, corporate reporting and planning tool known as the 'Delivery Hub'. It would include: delivery of work across aims; success measures; people and infrastructure; a legal dashboard and an update on budgets. A full report in the new format would be in place for the September Board meeting. **Action: Commissioners to email the CEO with any comments on the current format of the performance report to inform the approach in the new format of report.**

ii) Board members queried whether sufficient detail from the Scotland and Wales Committees had been included in the Performance Report. Discussion concluded that Committees felt more informed following the introduction of the 'Three Nations meetings' ahead of Board meetings and now that the CEO more regularly attended Committee meetings; however, Commissioners would welcome the opportunity to have joint events with Committee's where it was useful and appropriate to do so.

g) **Trans guidance for schools**

i) Discussions continued to take place with GEO around the timing of the publication of guidance for schools on trans pupils. Members agreed that further discussions needed to take place with UK Government, highlighting the specific contexts on Scotland and Wales, noting that some aspects of this work had been paused due to the coronavirus epidemic. **Action: Melanie Field to continue discussions with GEO and the Chairs of the Wales and Scotland Committees.**

h) **EHRC Diversity Programme**

i) An update was provided to the Board on the Commission's Diversity Programme. Over the last three years, an integrated People and Infrastructure programme has been delivered, with the aim of making the Commission an inclusive employer, attracting diverse talent, and enabling all colleagues to thrive at work. With a reduced budget and very limited recruitment planned in 2020/21, however, it was unlikely that significant progress would be seen in the short term. It was noted that a wider piece of work on diversity and inclusion was underway and would be discussed with HRRC in the future. The Board were additionally advised that HRRC were considering amending their terms of reference to include facilities and ICT, as these were very closely linked to the wider People agenda.

8.2 Finance Report:

8.2.1 Rebecca Hilsenrath presented the Finance Report (EHRC 90.08), which provided an update on the 2019/20 financial year-end position; a summary of the 2020/21 budget allocations; and a review of the Period 2 (May) financial performance. The following issues were considered further:

8.2.2 The Commission had not yet received its formal letter of delegation. This carries a risk in committing expenditure prior to receiving a formal allocation. The Cabinet Office Financial Controller and GEO had confirmed an indicative annual funding envelope of £17.1m RDEL, which represents a savings target of 3.75% against the initial funding position and a reduction of £331k against the 2019/20 allocation of £17.431m. The Commission's capital allocation for the year would be £0.5m, a reduction of £20k against the 2019/20 allocation.

8.2.3 The Finance team were looking at last year's work on managing financial risk, being agile and ensuring clear reporting mechanisms are in place to provide ARAC and Board. It was noted that the controlled reduction of the Commission's over-programming was based on latest staff recruitment projections and robust budget scrutiny. Conversations had taken place with the ARAC Chair on the improvement journey with regards to the reporting going forward.

8.2.4 It was noted that individual budgets and forecasts may be subject to change following the outcome of the reprioritisation exercise the Board was being asked to approve in respect of the race programme.

8.2.5 Officers advised the Board that the impact from the coronavirus epidemic on finances would become clearer later in the year. There would be some opportunities for reflection on the difficult decisions made and the possible savings made. There should be a clear audit trail of what has and has not been possible due to a 30% reduction in capacity and the additional benefit gained from the work we have prioritised. These points will be addressed in the 'new normal' project, and the Finance Director will ensure to undertake a review and report back to the Board later in the year. **Action: Bill Malloy / Lucy Dennett**

9. Governance and assurance item

9.1 Susan Johnson (ARAC Chair) presented the annual report and accounts papers. The Board had reviewed the papers ahead of the meeting. The following issues were considered and approved where applicable:

9.1.1 **The Annual Report and Accounts** (ARA) (EHRC 90.09) were discussed and approved by ARAC on 11 June following Board delegating sign off to ARAC in the 89th Board meeting on 14 May. The auditors had provided an unqualified opinion. The Finance team were praised for the excellent work undertaken. The text relating to 'going concern' on page 12 of ARA had been amended following discussions at ARAC. Overall, ARAC were pleased with the result, stating that the Commission was in a much better position than it had been this time last year and in previous years and it continued to improve its management of spend. The Board thanked ARAC for their work.

9.1.2 **NAO Completion report** (90.10). ARAC had discussed the report at its meeting on 11 June. The Board were requested to approve the report, subject to the outstanding issue regarding the assumptions used by Government Actuary's Department (GAD), which the NAO required before the Governance Statement could be signed by the Accounting Officer. Until the assurance was given by NAO, the Annual Report and Accounts could not be laid in parliament. The ARAC Chair advised the Board that this was not a significant concern and members approved the report on the basis that a resolution will be received very soon. The Chair thanked ARAC for their hard work in this area, advising that the Commission were ending the year in a strong place, given the impact on the organisation with the coronavirus epidemic.

9.1.3 **ARAC Chair's annual report** (EHRC 90.11). This report concluded that the Committee' activities during the year were sufficient to provide assurance to the Board that there were effective arrangements in place in relation to audit and risk assurance matters. The ARAC Chair highlighted the particularly high attendance from ARAC members over the last year. The Board agreed that the two independent members at ARAC were excellent participants, bringing fresh approaches to discussions.

9.1.4 **ARAC Terms of reference** (ToRs) (EHRC 90.12). The ToRs for ARAC had been revised to reflect changes requested by the committee. The

most significant changes related to paragraph 3 (responsibilities). ARAC had agreed the changes at their meeting and the Board were invited to approve the Terms of Reference. The Board approved the changes. **Action: Corporate Governance team to update the ToRs on the EHRC website.**

10. Strategic Item - Update on race strategy and reprioritisation

10.1 Following a Chair's action from the race strategy meeting on 28 May 2020 that approved an inquiry on race, Rebecca Hilsenrath presented the seven papers on the race programme (EHRC 90.13). These included: the overarching board paper; information on the Section 31 assessment of the Home Office's hostile environment policies; the draft theory of change; the results of the initial scoping exercise for the race inquiry; roles and responsibilities; the EHRC's diversity programme and the revised Business plan. The Board had reviewed the papers ahead of the meeting and the Chair thanked the Executive for the comprehensive, well drafted papers. Board approved reprioritisation of the Business Plan presented in the papers.

10.1.1 The Board were invited to undertake an initial discussion at this meeting, followed by approval of the final proposals for both the race programme and the inquiry at a meeting on 20 July.

10.1.2 The Board were informed that Cath Denholm, Executive Director for Corporate Services and England, would be the programme SRO.

The following issues were discussed and considered further:

10.2 **The overarching programme:**

a) The Executive advised that the race programme must be a priority piece of work, as we move from a reactive to a proactive phase of our coronavirus strategy. Members agreed, advising that timing was key. The Commission must not miss opportunities to address current challenges i.e. ethnic minorities disproportionately being made redundant; no recourse to public funds' for those without settled status, as well as long term impact i.e. earnings and retirement. Members requested work was phased to ensure both short and long-term impact and to get the support and backing of relevant stakeholders early on.

b) Members agreed that, given the Commission has a role in tracking government action / inaction to recommendations, this needs to be included in the theory of change proposal.

c) There was agreement that the guiding principles should focus on constructive, realistic planning on what is achievable, rather than reactive performative work, as well as building on existing Commission work i.e. stop and search; freedom of expression.

d) There was an agreement of the need for inclusion of the perspectives of ethnic minority colleagues in the work and that the proposed Race Advisory Group must have a diverse membership and that this may require building new stakeholder relationships. Members queried whether the Advisory Group would be an ongoing, long term group, or just operate for the duration of the programme.

e) Members requested that the programme develops its internal pipeline of diverse talent in relation to the EHRC's diversity programme. It was agreed that the Commission needed to be able to clearly articulate where it was with this work and the timescales over which change might be achievable.

f) Members discussed the importance of terminology in the context of the programme. Consideration needed to be given to whether 'BAME' is too broad a definition and whether those in the lived experience might favour a different definition.

10.3 **Race inquiry**

a) The Executive requested Board approve the recommendation that the race inquiry should focus on employment (EHRC: 90:13 Annex C – Inquiry proposals), as this was where it was considered that the Commission could have the largest impact. The Inquiry team would ensure that the work aligns with the Enforcement team's general work in this area, including the Section 31 on the hostile environment.

b) The Board agreed with the recommendation, stating that there was real enthusiasm and support to do this inquiry and use the Commission's unique voice to articulate a solution in this area. The following aspects, however, needed to be considered:

i) The focus should primarily be on key workers; low paid workers and the gig economy.
ii) Consideration needed to be given to the link with other areas; i.e. education and immigration.
iii) The need for different phases of the inquiry to address the immediate short-term concerns and longer-term impacts i.e. length of time out of employment.
iv) The need to prioritise setting out concrete proposals for action.
v) The need to get a robust, comprehensive stakeholder plan in place, to include Unions and those from the Black communities and to ensure that key stakeholders endorse the proposal; agree with the recommendations and push for action.
vi) The views of the Wales and Scotland Committees that, whilst they agree with the overarching requirement for a race inquiry, their preference was not for a focus on employment. This is was in part due to the fact that economic levers are not devolved. The Committees are, however, committed to ensuring there is a three nations approach to the inquiry. Members agreed building relations with stakeholders from the devolved nations is key.

Overarching ACTION: Libby McVeigh to consider Board comments and provide responses through the papers for 20th July Board call.

11 Any other business

11.1 David Isaac noted that he would be leaving his role as Chair on 9 August. Deputy Chair Caroline Waters would assume the role of Interim Chair upon David Isaac's departure and until a new appointment is confirmed. Caroline Waters said farewell to David Isaac, thanking him for his hard work, commitment and support. David Isaac voiced how passionate he was that the Commission continues to meet its aspirations and remains an independent and confident regulator.

11.2 Alison Parken steps down as acting chair of the Wales Committee. David Isaac thanked her for her valued contribution.

11.3 With no other business being raised, David Isaac thanked Board members and staff for their contributions, and drew the formal meeting to a close.

11.4 The next formal Board meeting would take place on 10 September 2020.

Agreed by the Board at its meeting of 10 September 2020